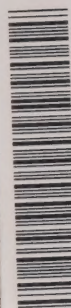


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Ontario Human Rights Commission Policy on Employment-Related Medical Information

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 **Ontario**
Human Rights Commission

PLEASE NOTE

These guidelines contain the Commission's interpretation of the Code provisions as they relate to employment-related medical information. They are subject to interpretation by boards of inquiry and the courts, and should be read with the specific provision of the Code. Any questions regarding this policy or the Code generally should be directed to the staff of the Ontario Human Rights Commission.

POLICY ON EMPLOYMENT-RELATED MEDICAL INFORMATION

This policy is intended to help applicants, workers and employers to understand their rights and responsibilities regarding employment-related medical information.

In the past employers often screened out applicants with disabilities based on medical information requested on application forms or obtained through pre-employment medical examinations. The Commission believes that such questions, asked as part of the applicant screening process, violate subsection 22.-(2) of the Code, which states:

22.-(2) The right under section 4 to equal treatment with respect to employment is infringed where a form of application for employment is used or a written or oral inquiry is made of an applicant that directly or indirectly classifies or indicates qualifications by a prohibited ground of discrimination.

Pursuant to subsection 22.-(2), any assessment to verify or decide an individual's ability to do the job, including a medical examination, should only take place after a conditional offer of employment is made, preferably in writing. This allows the applicant with a disability the right to be considered exclusively on his or her merits during the selection process.

The prohibition contained in subsection 22.-(1) is qualified by subsection 22.-(3), which states:

22.-(3) Nothing in subsection (2) precludes the asking of questions at a personal employment interview concerning a prohibited ground of discrimination where discrimination on such grounds is permitted under this Act.

That section allows an employer to ask, at a personal interview, whether an applicant has any disability-related needs that would require accommodation to enable him or her to do the essential duties of the job. The duty to provide such accommodation is discussed in greater detail below.

It is not unusual for an employer to ask about, or for a worker to volunteer information about, his or her specific medical condition. While not expressly prohibited by the Code, an employer or supervisor may be placed in a vulnerable position if he or she directly receives any information about the particular medical condition of an applicant or worker. Any subsequent employment-related decision may be perceived to be based on this information and a human rights complaint may result. It is the view of the Commission that to protect the employer as well as the applicant or worker, such information should remain exclusively with the examining physician and away from a worker's personnel file.

Duty to Accommodate

In some circumstances, the nature or degree of a person's disability may prevent that individual from performing the essential duties of a job. Subsection 16.-(1) provides that the right to equal treatment in respect of employment is not infringed where an individual is treated differently because he or she is incapable of performing or fulfilling the essential duties of the position because of handicap.

Subsection 16.-(1a) states, however, that an employee shall not be found incapable of performing the essential duties of a job unless it can be shown that it would cause undue hardship to fit his or her needs.

To avail themselves of the defence in section 16, employers must establish that they are unable to fit the needs of the individual without undue hardship, considering the cost of accommodation and any health and safety concerns. *

The duty to provide accommodation extends to all facets of the employment process: hiring, employment testing, on-the-job training, working conditions, transfer, promotions, etc.

to help in determining whether an individual can do the essential duties of a particular position, it is recommended that employers conduct a "Physical Demands Analysis. Such an analysis is used to define what is physically needed to perform the essential duties of each job in the workplace. Detailed job descriptions allow an employer to identify the skills and qualifications that are required for a job, and the physical requirements necessary to do the essential duties of that job. To help in this task, physical

demands analysis checklists are available through the Centre for Disability and Work at the Ontario Ministry of Labour.

* Please refer to the Commission's Guidelines for Assessing Accommodation Requirements for Persons With Disabilities to receive a detailed explanation of these standards.
